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In the Supreme Court of the United States

October Term, 1941

No. 536

ROBERT W. HALLIDAY,
Petitioner,

vs.

S. H. SQUIRE, SUPERINTENDENT OF BANKS OF THE STATE OF OHIO IN CHARGE OF LIQUIDATION OF THE UNION TRUST COMPANY,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT

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Petition For Writ Includes All Matters Required By Rule 38 - 2.

On Pages 4, 5 and 6 of the Petition for Writ, the Petitioner has set forth the details of the proceedings in each of the State Courts and the manner in which he was denied the benefits of a trial by jury in violation of Article 1, Section 5 of the Ohio State Constitution, and in violation of Amendment XIV, Section 1 of the Constitution of the United States.

ARGUMENT

– A –

RIGHT OF TRIAL BY JURY ON ISSUES RAISED BY FIRST DEFENSE OF AMENDED ANSWER

The First Defense set up in the Amended Answer filed in the Common Pleas Court raised issues on which Plaintiff was entitled to a jury trial. (RECORD 11 to 12).

In the case of *Rhodes vs. McDowell,* 24 O. App. 94, it was held:

> "A judgment on the pleadings cannot be rendered when issue is joined on a material proposition."

Respondent cites the case of *Hawkins vs Bleakly, Auditor of the State of Iowa, et al.*, 243 U.S. 210, and the case of *Iowa Central Railway Company vs. Iowa*, 160 U.S. 389, to support its contention that trial by jury is not one of the rights secured by the Fourteenth Amendment. These decisions have no force and effect upon the proceedings in the pending case, for the reason that the State of Iowa was free to pass laws wherein its inhabitants might be *Denied A Trial By Jury*, whereas, in the State of Ohio, each inhabitant thereof is guaranteed the benefit of *A Jury Trial By An Act Of The United States Congress.*

In the case of *Missouri vs. Lewis*, 101 U. S. 22-31, Mr. Justice Bradley held:

> "The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right."

I U. S. Stat. 51 provides:

> "It is hereby ordered and decreed by the United States Congress assembled that the following Articles shall be considered as a Compact between the Original States *and* the People and States in the said Territory, and forever remain unalterable, unless by common consent, to-wit:--"

Art. I relates to religious liberty. Article II entitles each inhabitant of the Northwest Territory to the benefits of trial by jury. These rights have not been abandoned in Ohio.

ARTICLE I, SECTION 5 OF THE OHIO STATE CONSTITUTION ADOPTS ART. II OF THE

ORDINANCE OF 1787 AND SAID ACT OF THE UNITED STATES CONGRESS I U. S. STAT. 51.

Article I, Section 5 of the Ohio State Constitution is as follows:

"The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury."

Section 11378, General Code of Ohio provides:

"An issue of fact arises upon a material allegation in the petition denied by answer."

Section 11379, General Code provides:

"Issues of fact arising in actions for money only, or specific real or personal property, shall be tried by a jury, unless a jury trial be waived."

Section 11421-1 General Code provides:

"In actions arising on contract, the trial by jury may be waived by the parties, and in other actions with the assent of the Court, as follows:

(1) By consent of the party appearing, when the other party fails to appear at the trial in person, or by attorney.

(2) By written consent, in person, or by attorney, filed with the clerk.

(3) By oral consent in open court, entered on the journal."

It is not claimed that a jury trial was waived. The record does not show such waiver, and Petitioner says for the information of the Supreme Court that a Jury Trial was not waived.

In the pending action, issues of fact arose for money only, upon material allegations in the petition denied by the Amended Answer.

In the case of *Rhodes vs. McDowell,* 24 O. L. App. 94, the Ohio Court held:

> "A judgment upon the pleadings cannot be rendered when issue is joined upon a material proposition."

The general denial of Defendant-Respondent was not waived by implication, as asserted by Respondent in the Answer Brief on Page 3.

– B –

THE RIGHT OF TRIAL BY JURY CANNOT BE INVADED BY LEGISLATIVE ACT OR BY JUDICIAL DECREE

In the case of *Gibbs vs. Girard,* 88 O. S. 34, in the 2nd paragraph of the syllabus, the Court held:

> "The right of trial by jury being guaranteed to all our citizens by the Constitution of the State, cannot be invaded or violated by either legislative act or judicial order or decree."

In the case of *Central Land Company vs. Saibley,* 159 U. S. 103, cited by Respondents, the Court says:

> "In order to come within the provisions of the Constitution of the United States, which declares that no state shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, but it must have been impaired by some act of the legislative power of the State, and not by a decision of its Judicial department only."

also

> "The Appellate Jurisdiction of the United States

Court, upon a Writ of Error to a State Court, on the ground that the obligation of a contract has been impaired, can be invoked only when an Act of the Legislature alleged to be repugnant to the Constitution of the United States has been decided by the State Court to be valid, and not when an Act admitted to be valid has been misconstrued by the Court."

This decision is sound, but it applies to facts relating to the impairment of a contract, where the petitioner contended before the Supreme Court of the United States for a review of the decision of a State Court, which was charged with the act of impairment.

This Central Land Company case reached the U. S. Supreme Court through the contention of infringement of the provisions of Article X of the Constitution of the United States. The language of Article X is in essential part as follows:

"No state shall *Pass Any Law* impairing the obligation of contracts."

The language of Amendment XIV, Section I, is different, and as follows:

"No state shall *Make Or Enforce Any Law* which shall abridge the privileges or immunities of Citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

"NO STATE SHALL MAKE OR *ENFORCE* ANY LAW, ETC."

"NOR DEPRIVE ANY PERSON OF....., PROPERTY, WITHOUT *DUE PROCESS OF LAW*."

are words of limitation upon State Legislators and *State Judges.*

– C –

THE SUPREME COURT OF THE UNITED STATES MAY REVIEW THE EXERCISE OF THE JUDICIAL FUNCTION OF A STATE COURT

The case of *Howard vs. Kentucky,* 200 U. S. 164, cited by Respondent, supports the contention of the Petitioner respecting the existence of a Federal Question of substance, because the Supreme Court did review the action of the Supreme Court of Kentucky, and held:

> "That the accused, the petitioner, was not denied due process of law within the meaning of the XIV Amendment by the State Court in discharging a juror in a murder trial before he was sworn, after questioning him in the absence of the accused, but with the consent of counsel, and substituting another juror equally competent."

In all other respects the Howard case is not a parallel case and is not applicable to the proceedings in the pending case.

In the case of Converse, reported in 137 U. S. 624, and cited by Respondent, the Court held:

> "The XIV Amendment was not designed to interfere with the exercise of the power of State Courts to administer the process provided by its laws."

But the Converse case did not originate within the State of Ohio, nor within the area formerly known as the Northwest Territory, in which the Act of Congress, I. U. S. Stat. 51, has pre-determined and established due process for Courts of the State of Ohio.

None of the cases cited by the Respondent originated in the area of the Northwest Territory.

This Petitioner cites the case of *Tari vs. the State of Ohio,* 117 O. S. 481, wherein the Court, on page 485, says:

> "It is of course essential to the validity of any

judgment that the Court rendering it should have jurisdiction, not only of the parties, but of the subject matter. But it is equally well settled that it is for the Supreme Court of a State finally to determine its own jurisdiction, and that of other local tribunals, since the decision involves a construction of the laws of the State by which the Court was organized. The federal question is whether in the State Court, acting within such jurisdiction, the defendants were denied due process of law. It is within the province of the United States Supreme Court to determine whether a jurisdiction *So Exercised* operates as a denial of due process of law."

Chief Justice Marshall of Ohio quoted the foregoing from the decision of Justice Lamar in the case of *Standard Oil Co. vs. Missouri,* 270 U. S. Rep., at pages 280 and 281.

In the Tari case, 117 O. S., at page 486, Chief Justice Marshall says—

"While a State can fix, determine and define the jurisdiction of its courts, it is still open to the United States Supreme Court to determine whether a jurisdiction *so exercised* operates as a denial of due process of law."

In the case of *Tumey vs. Ohio,* 273 U. S. Rep. 510-511, the Court held:

"Judgment of a court within its jurisdiction is final and conclusive, unless so clearly unsupported as to indicate mistake, bias or willful disregard of duty."

In the Tumey case, the Court also held that the interest of the mayor in the result of his decision resulted in a voidable judgment, and on page 531, Chief Justice Taft says:

"From this review of the common law we conclude that a system by which an inferior judge is paid for his services only when he convicts the defendant has not become so embedded by custom in the general practice either at common law or in this country that it can be regarded as due process of law."

Chief Justice Taft declared the judgment to be violative of Amendment XIV.

From these cases it appears that power to review the exercise of the judicial function of a state court to determine whether the function, as operated, resulted in a denial of due process of law, is within the province of the Supreme Court of the United States if the action of the State Court is so clearly unsupported as to indicate mistake, bias or willful disregard of duty. The pending case falls in this category.

In the pending case the nisi prius Judge was handicapped by a mortal disease, which enfeebled his body and weakened his will. Discernment was lacking. Application of law yielded to recognition of prestige of opponents of the Plaintiff.

The Judge was grossly mistaken about the law and the facts of the pending case relating to the question of prior adjudication raised by the Defendant, in the third defense of the Amended Answer. (R—14 to 30).

Four certain cases involving the title to Real Property in the dissolution of corporations in which the Plaintiff herein appeared as a party therein, were pleaded in the pending case by Respondent and alleged to constitute a prior adjudication of money matters involved herein.

Three of said alleged prior cases are titled as follows:

Peter Halliday vs. The York-Lake Co., No. 330247 C. P.

Peter Halliday vs. The Richmond Improvement Co., No. 330248 C. P.

Peter Halliday vs. The Inland Properties Co., No. 380249 C. P.

The Union Trust Company filed a motion in the Court of Appeals, for leave to become a party in each of said cases, but the motion was denied by the Court of Appeals.

The fourth one of these cases as pleaded by Defendant-Respondent, to-wit:—Common Pleas Court Case No. 361753, is found on pages 24, 25, 26 and 27 of the Record.

The title of said case and all the parties are as follows:

No. 361753 C. P.

Cancellation, Rescission, To Quiet Title and Relief.

Robert W. Halliday,

vs.

Peter Halliday,
Peter Halliday, Admr.,
Francis J. Horvath, Receiver of The York-Lake Co.,
Francis J. Horvath, Receiver of The Richmond Improvement Co.,
Francis J. Horvath, Receiver of The Inland Properties Co.,
The York-Lake Co.,
The Richmond Improvement Co.,
The Inland Properties Co.

Neither the Defendant-Respondent, nor the predecessor of Respondent was a party in said alleged prior suits. In each of the alleged prior suits, issues were joined on the question of Title to Real Property. The subject matter of the pending suit is a claim for money arising in Tort and not upon a contract.

The ailing Judge failed to observe the vital facts and neglected to apply the well-established general rule of law

so clearly announced in the case of *Coates vs. Chillicothe State Bank*, 23 O. S. 415, where on page 433 Judge Day says: "It is true there is much in the petition, and in the prayer thereof, that looks like an effort to open the decree sought to be impeached, for the purpose of a retrial of the case. But the parties in the two cases are different, and only that part of the decree affecting the plaintiff is impugned. * * It follows that the District Court erred in sustaining the motion to dismiss the appeal, the judgment of that court must therefore be reversed, and the cause remanded for further proceedings."

In the case of *Witte vs. Lockwood*, 39 O. S. 141, Judge Okey stated the General Rule to be that a party when sued is bound to set up every defense legal or equitable or both, which he may have to an action, and effectively waives those not pleaded, but an exception to the rule exists where a possible defense constitutes a set-off or counterclaim, and may become the basis of a new suit and this is true in those cases where different parties are found in the second case.

Petitioner was deprived of the benefits of a trial by jury guaranteed to him by Article I, Section 5 of the *Ohio* Constitution, and by Amendment *XIV*, Section I, of the United States Constitution, upon the basis of prestige, and not by the careful consideration of a Court, able to hear and determine.

– D –

ADMISSIONS BY RESPONDENT IN THE OHIO STATE COURTS AND IN ITS BRIEF FILED IN THE SUPREME COURT OF THE UNITED STATES

The Ohio Courts were made aware of the facts involved in the Second Defense of the Amended Answer by the allegations of Plaintiff's Reply (See Petition for Writ, page 3).

In the lower courts the Respondent admitted the truth of said allegations to-wit: That said Defendant, the Liquidator of the Union Trust Co. acknowledged receipt of Plaintiff's Proof of Claim against the defunct Union Trust Co. on or about June 14, 1937 and that said Liquidator held said Proof of Claim in silence with the intention of postponing action on said claim beyond the time when said claim would become barred by Section 11224 of the General Code of Ohio and that the Plaintiff became aware of such motives and anticipated such delay and thereupon about the end of July 1937 notified the Liquidator in writing (by Registered Mail) that unless the Claim was allowed or rejected on or before August 5, 1937, that said Planitiff would consider that the Liquidator had rejected the claim.

Respondent admits that the said Proof of Claim for Seven Hundred, Forty-one Thousand, Six Hundred Fifty-two Dollars and Eighty-nine Cents ($741,652.89) was therefore held in silence by said Liquidator beyond said 5th day of August 1937, and that promptly thereatfer on or before August 16, 1937, the Plaintiff prepared an filed his Petition in Case No. 466,490 in the Common Please Court of Cuyahoga County, Ohio.

On Page 3 of Respondent's Brief opposing Petition for Writ, Respondent admits the truth of matters in avoidance so alleged in the Reply (of the Plaintiff).

Such admission covers the following allegation of said Reply; . . . "that Plaintiff prepared and filed his Petition on or before August 16, 1937 after rejection and within the time required by Section 710-92a of the General Code of Ohio."

The last foregoing allegation is incorporated in said Record (R-31).

THE FOLLOWING CASES CITED BY RESPONDENT TO SUPPORT ITS CONTENTION THAT THE PETITION FOR WRIT IS INSUFFICIENT, ACTUALLY SUPPORT THE CONTENTION OF THE PETITIONER.

In the case of *National Licorice Co. vs. Nat. Lab. Rel. Bd.*, 60 S. C. R. 569, 309 U. S. 350, the petition for writ was held to be sufficient, and the Supreme Court reviewed the decision of the Lower Court and modified the judgment of the Lower Court.

In the case of *Bonner vs. Gorman, Admr.*, 213 U. S. 86, the United States Supreme Court refused the Writ on the ground that the Petitioner injected the Federal question only after the Second Appeal. In the pending case, the Petitioner injected the Federal question in the Court of first instance.

– E –

REPLY TO IMPERTINENT MATTERS

Respondent has injected impertinent matters in its Brief. On Page 4 of its Answer Brief, Respondent has related that Petitioner made false certificates of corporation resolutions under duress of an officer of The Union Trust Company. Such statement is untrue and impertinent. An officer of The Union Trust Company urged the execution thereof for evidence of authority to deposit and withdraw money in and from the Bank, and in hostile manner directed the Petitioner to place his signature upon Printed Certificates of Corporate Resolutions furnished by The Union Trust Company, and designated as Form M-96 5M 1-27 and titled—

"CERTIFIED RESOLUTION
FOR
THE UNION TRUST COMPANY
CLEVELAND, OHIO."

– F –

CONCLUSION

Petitioner contends that he is entitled to *A Day in Court Before A Jury,* under the provision of Article I, Section 5 of the Ohio State Constitution; under I U. S. Statute 51, and under Amendment XIV, Section I of the United States Constitution.

Petitioner contends that he has complied with the requirements of law and the rules of Court and that the Petition filed herein presents a Federal question of substance not heretofore determined by this Court.

Respectfully submitted,

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